COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 31, 2002

APPLICATION OF

CAVALIER TELEPHONE, LLC CASE NO. PUC010213

To reclassify the Bethia
wire center into density
cell one

FINAL ORDER

On October 16, 2001, Cavalier Telephone, LLC ("Cavalier"), filed its Application and Motion to Reclassify the Bethia Wire Center ("Application"), which requests the State Corporation Commission ("Commission") to reclassify Verizon Virginia Inc.'s ("Verizon Virginia") Bethia wire center from density cell three to density cell one.[1] Pending the requested reclassification, Cavalier asks the Commission to require that certain promotional discounts applicable to the Bethia wire center be maintained.

Pursuant to the Preliminary Order issued November 7, 2001, Verizon Virginia filed its response and Motion to Dismiss and Answer on November 28, 2001, and Cavalier filed its Reply on

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[1] The Commission ordered that Verizon Virginia's unbundled network element ("UNE") loop prices be deaveraged into the three groups known as density cells one, two, and three. Density cell three is the highest priced ($29.40 for a basic loop) and density cell one is the lowest priced ($10.74 for a basic loop). *See* Order issued May 22, 1998, and Final Order issued April 15, 1999, in Case No. PUC970005, *Ex Parte: To determine prices Bell Atlantic-Virginia, Inc., is authorized to charge Competitive Local Exchange Carriers in accordance with the Telecommunications Act of 1996 and applicable state law* ("UNE Pricing Order").

December 10, 2001. On January 28, 2002, Cavalier filed its Motion to Compel Discovery Responses from Verizon Virginia. Based upon the findings hereinbelow, we determine Cavalier's Motion to Compel to be moot.

PLEADINGS

In its Application, Cavalier claims that because of the rapid growth in the Bethia area, both the line density and cost for the Bethia wire center has altered and that it should be reclassified from density cell three to density cell one. Cavalier further states that the Commission may investigate these rates charged by Verizon Virginia for facilities within the area served by the Bethia wire center under its authority pursuant to § 56-247 of the Code of Virginia.

Verizon Virginia responds that the Commission did not classify wire centers according to density in Case No. PUC970005. Verizon Virginia states the Commission rejected the proposal in that case to group wire centers by density and instead adopted the Staff methodology to group wire centers by cost. Verizon Virginia further claims that Cavalier's request would equate to special treatment for a single exchange and that either a full-blown cost proceeding to determine new costs or, at a minimum, an entire reconfiguration of cell groupings would be necessary. Verizon Virginia believes that neither of these two alternatives are warranted. In addition, Verizon Virginia points out that the Federal Communications Commission ("FCC") is currently resetting loop rates in its pending arbitration with AT&T Communications and WorldCom.

FINDINGS

The Commission found in the UNE Pricing Order

> ...that prices of interconnection and network elements should be based on their total, forward-looking, long-run incremental costs; that the application of these principles should reflect BA-VA's existing wire center locations and the most efficient technology that can reasonably be employed in the immediate future; and that an appropriate allocation of shared costs and common overhead costs, excluding retailing costs, should be included in these costs. The Commission finds that prices based on these costs meet the requirements of the Act.

UNE Pricing Order, May 22, 1998, p. 5.

The average UNE loop cost developed by the Commission was deaveraged into three groups of wire centers as proposed by Staff.[2] This deaveraging methodology developed by the Staff was based on cost and did not consider line density as a factor in determining the wire center groupings. The fact that many of the wire centers included in density cell one are in highly populated areas is only coincidental. The Commission found that "this [grouping of wire centers] arrangement is most closely related to loop costs; and, therefore, it is the best reflection in this

[2] See UNE Pricing Order, May 22, 1998, p. 10.

record of the Act's requirement to base network element prices on costs."[3] Therefore, we agree with Verizon Virginia's statement that for purposes of grouping wire centers into cells, density is irrelevant.[4]

Relying upon the incorrect premise that the Commission's deaveraged UNE loop pricing methodology was based upon line density, Cavalier asks this Commission to investigate the UNE loop rates charged for facilities served by the Bethia wire center because of population growth in the area and a supposed increase in line density (with wider allocation of cost) in the Bethia wire center.[5] Cavalier does not identify any specific reductions in the costs of the Bethia wire center.

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[3] Id.

[4] Cavalier relies upon the Staff Report filed May 21, 1997, and the Supplemental Exhibit to the Staff Report filed June 5, 1997, in Case No. PUC970005 for the proposition that "the considerations for dividing wire centers into different density cells were line density as modified by cost information." (Application, p.4). This is incorrect. The Supplemental Exhibit to the Staff Report, filed June 5, 1997, reports on page 17 that "[t]he plot of recommended wire center prices shown in the appendix to this supplement demonstrates that 77 percent of the lines in BA-VA's territory fall within a fairly narrow range of wire center prices that have a top price of $13.50. The line-weighted average of this price group is $10.76. If the remaining, higher cost wire centers are divided into two price groups of approximately the same number of lines, the following three price groups result. These price groups are recommended by the Staff." As noted above, the Commission accepted this recommendation, which is based upon grouping wire centers based upon similar costs.

[5] Cavalier brings its Application for investigation of the Bethia wire center UNE loop rates under §§ 56-2; 56-35; 56-235; and 56-247 of the Code of Virginia.

The Commission concludes from the pleadings of the parties, the UNE Pricing Order, and other applicable law that Cavalier has failed to allege a legal or factual basis upon which this Commission should investigate the UNE loop rates for the Bethia wire center.[6] Therefore, the Commission finds that the Application should be denied.

The Commission reminds Cavalier that it may always pursue changes to the Bethia wire center UNE loop rate when it negotiates and/or requests arbitration of a new interconnection agreement with Verizon Virginia, pursuant to § 252 of the Act or under applicable state regulations.

Cavalier requests that this Commission order Verizon Virginia to maintain the promotional discounts for facilities in the area served by the Bethia wire center, as ordered by the FCC, pending this Commission's ruling upon the Application. As we are now denying the Application, there is no need to address this interim relief request.

Based upon the findings above, we need not address Verizon Virginia's Motion to Dismiss, which is now denied.

Accordingly, IT IS ORDERED THAT:

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[6] Cavalier further invites us to make a periodic reexamination of density cell groupings in its Reply. However, the Application only addresses the Bethia wire center. We find no basis for initiating a reexamination of all wire center groupings.

(1) The Application of Cavalier is hereby denied, consistent with the findings above.

(2) The Motion to Dismiss filed by Verizon Virginia is hereby denied.

(3) There being nothing further to come before the Commission, this case is now closed.